



# The COURT COMPASS

NEWSLETTER OF THE MASSACHUSETTS JUDICIAL BRANCH

## Russian Delegation Observes Massachusetts Courts and Legal System



A judge from Tomsk, Russia, Valentina Lukonkina, presents a small gift of appreciation to Supreme Judicial Court Chief Justice Margaret H. Marshall, left, as Justice Martha B. Sosman looks on. A delegation of six Russian judges and attorneys spent a week in September observing the legal system in Massachusetts, as part of an ongoing exchange sponsored by the Open World Program and funded by the Library of Congress. A Massachusetts delegation will pay a return visit to Tomsk in October. (More photos are on Page 3.)

## Innovative Jury Practices Become More Common Following Landmark Project

As an attorney trying a case in the courtroom of U.S. District Court Judge William G. Young in 1986, Peter M. Lauriat, now an Associate Justice of the Superior Court, was stunned when Judge Young suddenly addressed the members of the jury and asked if they had any questions.

"I was appalled," he said. "I thought it was an outrageous thing to ask." He objected to the process in a sidebar conference with Judge Young, but was overruled.

Several years later, as he was presiding over one of his first jury trials as a Superior Court judge, a juror suddenly stood up and shouted out a question to the attorney.

"The question was pretty innocuous, something along the lines of 'please draw us a map,' or 'please repeat the date,'" Judge Lauriat said. "But it caused me to start thinking about how important it is to create an allowable process in which jurors can ask questions."

**'Although the techniques may not be appropriate in every case, they can enhance the jurors' ability to understand, digest, appreciate, and resolve the issues they are confronted with, and ultimately enhance the quality of justice.'**

— Superior Court Judge  
Peter M. Lauriat

### The Project

His concern for the topic led to his involvement in the Massachusetts Project on Innovative Jury Trial Practices, whose final report was published in book form in September.

The Project began in November, 1997, with a two-day conference in which judges from the Boston Municipal Court, District Court, Juvenile Court, and Superior Court met with national experts in jury trial procedures, former jurors, and attorneys to discuss ways of enhancing jurors' performance. Participants selected sixteen innovative practices for judges to test, including juror notetaking and questioning of witnesses; using "plain English" during the trial and in instructions to the jury; "interim commentary," or allowing attorneys to explain the significance of evidence to the jury in the middle of a trial; and providing jurors written or taped instructions to refer to during their deliberations.

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Throughout the next year, sixteen judges in the Superior and District courts tested the practices over the course of 150 trials. The judges, as well as 1,264 jurors and 176 attorneys, completed extensive questionnaires concerning their experiences, which provided a wealth of data on the effectiveness of the practices.

The Project was managed by the National Center for Citizen Participation in the Administration of Justice, headed by Florence Rubin, and the Flaschner Judicial Institute, headed by Robert J. Brink, with additional resources provided by the National Center for State Courts and funding from the State Justice Institute.

"There is no question that the concept of innovative jury practices has taken off since the field tests," said Mr. Brink, now Executive Director of the Social Law Library and Executive Vice President of the Flaschner Judicial Institute. "Techniques such as allowing jurors to submit questions and take notes are very common now, when two or three years ago they were not common at all."

In addition to providing a qualitative and quantitative assessment of the various practices, the year of field testing provided an ideal opportunity for judges and attorneys to become comfortable with them.

"It proved to be a very effective way to implement innovative techniques — so much so that other states around the country are now conducting projects based on the Massachusetts model," Mr. Brink said. Since the end of the field tests, the Flaschner Judicial Institute has pub-

lished a manual, edited by Judge Lauriat, that describes all sixteen techniques as a guide to help judges and attorneys in Massachusetts and elsewhere.



*Photo Courtesy of the Flaschner Judicial Institute*

**Supreme Judicial Court Chief Justice Margaret H. Marshall, center, met with the principals of the Massachusetts Project on Innovative Jury Trial Practices, whose final report was published in book form in September. From left are: Robert J. Brink, Executive Vice President of the Flaschner Judicial Institute; Superior Court Judge Peter M. Lauriat; Florence Rubin, President of the National Center for Citizen Participation in the Administration of Justice; and G. Thomas Munsterman, Director of the National Center for State Courts' Center for Jury Studies.**

## Juror Questioning

One enthusiastic proponent of juror questioning is Superior Court Judge Patrick F. Brady. "I'm very fond of doing anything that will help jurors understand the issues that come up during a trial," he said.

Once a jury has been impaneled, he tells the jurors that he will permit questions, and describes the procedures set out in the Supreme Judicial Court's opinion last year, *Commonwealth vs. Britto* (433 Mass. 596). Judge Brady also informs jurors that he must alter or reject a question if it does not conform to established rules of evidence.

Jurors may submit written questions to him at any point in the trial. Once he receives a question, he discusses it with the attorneys during a

sidebar conference. Assuming the question calls for evidence that is admissible, he allows the attorneys to pursue it, or not, as they wish. Judge Brady does not ask any juror questions himself.

"No lawyer has ever complained about this method," Judge Brady said. "The questions prove to be a plus for attorneys. Even a question that is inadmissible is helpful because it gives the attorneys insight into what is going on inside the minds of the jurors."

He added that questions also help him focus on legal issues of concern to jurors.

"It's not a bad thing to know what jurors are thinking," he said. "It provides an opportunity for me to mitigate any preconceived notions

or lack of impartiality. It lets me know if perhaps a cautionary instruction might be appropriate."

Judge Lauriat commented that other judges may allow juror questioning to proceed differently. "Some judges have disclosed a juror's question to the lawyers, given them a chance to object, rephrased it to make it neutral, posed it to the jury themselves, and then allowed the lawyers time to follow up. For other judges, any attorney objection is enough to kill a question. There is no one magical approach."

He said that allowing jurors to ask questions has never unduly extended the length of any of his tri-



## Russians Spend Busy Week in Massachusetts

At left, the judges and attorneys from Tomsk, Russia, attend a luncheon meeting with Supreme Judicial Court Chief Justice Margaret H. Marshall, Justices Martha B. Sosman and Robert J. Cordy, and Superior Court Judge Margot Botsford. Superior Court Judge Paul A. Chernoff and Supreme Judicial Court Public Information Officer Joan Kenney arranged meetings, courtroom observations, tours, and activities for the delegation over their week's visit.

Members of the Massachusetts delegation that will travel to Tomsk in October are, from left in photo below, Justice Cordy, Committee for Public Counsel Services Attorney Geoffrey C. Packard, Superior Court Judge Mary-Lou Rup, Norfolk County Assistant District Attorney Tanya Karpiak, and Middlesex County Sheriff's Department Attorney Lee J. Gartenberg. The delegation also will include Assistant U.S. Attorney William Welch II and State Representative Kevin J. Murphy.



### Jury Trial Innovations

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als. During the year of the field testing, jurors asked an average of thirteen questions per trial in which juror questioning was allowed. Judge Brady added that jurors did not ask any questions in a majority of his trials, and only a few in most of the rest.

"In about one trial of every fifteen, a jury led by bright and inquiring souls will ask quite a few questions," he said, "and it has never created any problems."

### Notes of Caution

However, not every judge is as enthusiastic a proponent of juror questioning. Supreme Judicial Court Justice Judith A. Cowin, in a concurring opinion to the Britto decision, stated that "the practice of juror questioning is best addressed either by the Legislature or by the adoption of rules

by the Court after an in-depth consideration of the entire subject matter."

Superior Court Judge Judd J. Carhart also expresses caution over the practice. "I allowed juror questioning for a while, but then quit," he said. "Now I allow questioning only if both attorneys agree, and in cases where it would be particularly appropriate, such as very complex civil cases. Questioning can take a lot of time, and I have great faith in attorneys' ability to ask all the questions necessary."

However, he said, he appreciates having the option to use juror questioning and other innovative jury trial techniques. "I think judges and the bar benefit from having these options before them," he said.

He added that providing written instructions for the jury before deliber-

ations begin has proved to be a particularly helpful technique. He writes his charge to the jury in advance, allows opposing counsel to review it, makes changes as appropriate, and then provides copies to the jurors. "This drastically reduces questions from the jury during deliberations," he said.

Judge Lauriat said judges should not be compelled to use any of the innovations that the Project encompassed. "The goal of the Project was simply to encourage judges to try the innovations, while also giving them the discretion to decide whether to use them. Although the techniques may not be appropriate in every case, they can enhance the jurors' ability to understand, digest, appreciate, and resolve the issues they are confronted with, and ultimately enhance the quality of justice." ■



# Committee to Develop Guidelines on *Pro Se* Litigants

The Supreme Judicial Court Steering Committee on Unrepresented Litigants is exploring ways in which the courts can better meet the challenges posed by the growing number of unrepresented, or *pro se*, litigants. The Committee members, who were appointed by the Supreme Judicial Court, have been meeting since April.

"Justice must be available to all our citizens, regardless of whether they are represented by a lawyer," said Supreme Judicial Court Chief Justice Margaret H. Marshall.

"The courts and bar have already done considerable work to determine ways to make the justice system work for all our citizens. The primary task for the Steering Committee is to review the work that has been done and recommend action steps that the courts may take."

Chief Justice Marshall also highlighted the importance and history of the right to self-representation in a speech before an educational session of the 2002 Annual Meeting of the Conference of Chief Justices and the Conference of State Court Administrators in Maine last summer. Chief Justice Marshall is Co-Chair of the Conferences' Joint Task Force on *Pro Se* Litigation.

The Supreme Judicial Court earlier this year named Massachusetts Appeals Court Justice Cynthia J. Cohen as Chair of the Steering Committee on Unrepresented Litigants.

Justice Cohen said the Committee was reviewing ideas generated during the Statewide Conference on Unrepresented Litigants in March, 2001, as well as recommendations made in a State Action Plan written by the State Team on Unrepresented Litigants headed by Suffolk Probate and Family



Massachusetts Appeals Court Justice Cynthia J. Cohen, fourth from right, is Chair of the Supreme Judicial Court Steering Committee on Unrepresented Litigants. Working on the project, from left, are: Karen Franzek, Law Clerk for Justice Cohen; Committee member Marlene M. Ayash, Land Court Administrative Attorney; Christine Burak, Supreme Judicial Court Administrative Attorney; and Committee members Hon. Thomas C. Horgan, Associate Justice of the Boston Municipal Court; Thomas R. Lebach, Clerk-Magistrate of the Plymouth County Juvenile Court; Maura S. Doyle, Supreme Judicial Court Clerk for Suffolk County; Hon. Lawrence Wernick, Associate Justice of the Superior Court; Marnie Warner, Law Library Coordinator; and David A. Schwartz, Probate and Family Court *Pro Se* Coordinator.

Court First Justice Elaine M. Moriarty. The Committee is building on proposals made in earlier reports by the Probate and Family Court and the Boston Bar Association Task Force on Unrepresented Litigants.

"We are an action-oriented Committee that is working on translating the previously generated ideas into concrete, practical solutions," Justice Cohen said. "We also are looking at programs and policies developed in other states."

A subcommittee will help to develop guidelines for judges, clerks, court staff, and attorneys, while other working groups will be named to address several other topics.

"The working groups will be very inclusive. We hope to draw on

the expertise of the bar, court staff, community groups, law schools, and other interested constituencies," Justice Cohen said.

In addition to Justice Cohen, the members of the Steering Committee are: Land Court Administrative Attorney Marlene M. Ayash; Supreme Judicial Court Clerk for Suffolk County Maura S. Doyle; Worcester Housing Court Judge Diana H. Horan; Boston Municipal Court Judge Thomas C. Horgan; Plymouth County Juvenile Court Clerk-Magistrate Thomas R. Lebach; Probate and Family Court *Pro Se* Coordinator David A. Schwartz; Administrative Office of the Trial Court Law Library Coordinator Marnie Warner; and Superior Court Judge Lawrence Wernick.

## NEWSMAKERS



### Portugal Honors Appeals Court Justice Phillip Rapoza

Portugal has bestowed its highest civilian honor, the title of "Commander of the Order of Prince Henry the Navigator," upon Massachusetts Appeals Court Justice Phillip Rapoza.



Justice Rapoza

Justice Rapoza is one of only eight people from around the world to receive the distinction this year. In making the award, Portuguese President Jorge Sampaio cited Justice Rapoza's work "promoting closer relations between the judicial institutions of the two countries."

Among other services to national, Massachusetts, and Fall River-area

organizations, Justice Rapoza recently finished editing a bilingual book for Portuguese speakers in Massachusetts, titled "A Guide to Criminal Law and Your Legal Rights."

"Being named a Commander in the Order of Prince Henry the Navigator is a great honor," Justice Rapoza said. "As the grandson of Portuguese immigrants, it is especially meaningful to me."

"My involvement in the initiative to create closer ties between the legal systems of the United States and Portugal has been extremely rewarding on both a personal and a professional level. I am particularly gratified to have this effort acknowledged by President Sampaio. His kind words are a tribute to all those who have helped to bring about the success of this endeavor."

### Clerk-Magistrate Paul Burke Elected to National Board

Northeastern Housing Court Clerk-Magistrate Paul J. Burke has been elected to a three-year term to the Board of Directors for the National Association for Court Management.

The NACM works to improve the quality of judicial administration of courts nationwide. Among other activities, it provides members with professional education, facilitates the exchange of information, and encourages the application of modern management techniques to courts.

"The election of Clerk-Magistrate Burke is a great honor not only for him, but for the Housing Court and the entire Trial Court," said Housing Court Court Administrator Harvey J. Chopp.



Players and supporters of the Juvenile Court and Probate and Family Court teams gathered at a softball diamond in Dorchester in late June.

### Juvenile Court Team Successfully Defends Title in Judge Lydon Softball Challenge

More than fifty judges and staff members from the Juvenile Court and the Probate and Family Court held a friendly contest for softball supremacy this summer at the Second Annual Leo J. Lydon Softball Challenge in Dorchester.

Once again, the Juvenile Court team, captained by Judge Jose

Sanchez, earned a victory on the field.

"The teams play pretty hard, because everybody wants to win," commented Juvenile Court Assistant Court Administrator Donna Ciampoli, one of the organizers of the game. "But mostly it's just a fun way for the two courts to come together in memory of Judge Lydon."

Attorney Lydon practiced extensively before both courts before becoming an Associate Justice of the Juvenile Court in 1999. Judge Lydon grew up in Dorchester and was an enthusiastic athlete throughout his life. He died in a tragic car accident on his way to the Stoughton District Court in November, 2000.

# Eighteen Students Complete Judicial Youth Corps

Eighteen Boston high school students received Certificates of Achievement from Supreme Judicial Court Justice Roderick L. Ireland in August for successfully completing the twelfth year of the Supreme Judicial Court's Judicial Youth Corps.

In May, students began the program by participating in lively, interactive educational sessions taught by judges, attorneys, other court staff, and law enforcement personnel. Activities also included participation in mock trials and visits to courts, a law firm, the Nashua Street Jail in Boston, and the Boston Police Department.

Assistant Clerk Robin E. Vaughan explains her duties to a Judicial Youth Corps student during a session of the Suffolk Superior Court. Each year students get a first-hand view of work in the court system by spending a day shadowing judges, clerks, probation officers and other court personnel. The session was presided over by Assistant Trial Magistrate Gary D. Wilson, seated at right. Standing at left is Assistant Clerk Frank R. Barbour.

In July and August, the Judicial Youth Corps students worked as paid interns in various courts, with their stipends generously provided by the Boston Private Industry Council.

The students, divided into small groups, also participated in informal, weekly luncheons with Justice Ireland. The program is managed and supervised by SJC Public Information Officer Joan Kenney.



Pictured with the eighteen students of the 2002 Judicial Youth Corps are, seated at left, Supreme Judicial Court Chief Justice Margaret H. Marshall, and Justice Roderick L. Ireland, seated at right.

Standing at far left is Vanessa Scott-Brown of the SJC Public Information Office, Co-Coordinator of the program along with attorney and Another Course to College Director Jerry Howland, third from left. At far right is Joan Kenney, SJC Public Information Officer.





# IT Evaluators Scrutinize *MassCourts* Bids

The Information Technology Evaluation Team, consisting of thirty-seven representatives from the Judicial and Executive Branches, since early summer has been working hard to ensure that the most qualified vendor is selected to create and install *MassCourts*, the comprehensive case management and docketing system that will be used throughout the Trial Court.

"Each member of the IT Evaluation Team has put in hundreds of hours on the project," said Superior Court Judge Timothy S. Hillman, the Project Executive for the Trial Court's IT Project. "They've done a tremendous job."

Personnel from all seven departments of the Trial Court, the Administrative Office of the Trial Court, the Office of the Commissioner of Probation, and the IT Project office, as well as the Supreme Judicial Court and the Executive Office of Administration and Finance are members of the

Team. While the members have represented their individual offices in evaluating the prospective vendors, they also have focused on identifying one computer system that will best serve all Trial Court users and the public.

"They have been able to accomplish what they have done because they have bonded together as a team," Judge Hillman said. "They set aside their territorial concerns and were motivated purely by what's best for the entire Trial Court."

Based on their work, the Trial Court was scheduled to select a vendor for the \$18 million project before the end of September.

Members of the Evaluation Team began their work in July, with an intensive three-day course on how to evaluate technology pro-

posals. The training, conducted by the state Department of Administrative Services and supervised by IT Project Manager Susan Anne Laniewski, Esq., and other experts in technology procurement, covered techniques for evaluating written proposals and vendor demonstrations, as well as the fundamentals of the statewide procurement process. Classes included group sessions, team building exercises, role-playing, and practice sessions.

Team members also had to study the voluminous Business Requirements Document, which specifies the thousands of separate docketing and case management functions that the *MassCourts* computer system will perform.

In August, the Team participated in day-long presentations by four vendors bidding on the project, held at Boston's Edward W. Brooke Courthouse. The vendor demon-

*IT Evaluation Team* continued on page 8



Supreme Judicial Court Justice Roderick L. Ireland conducts an educational session on juvenile law in the Supreme Judicial Court Courtroom. Weekly educational sessions are also conducted by judges, probation officers, and other staff members, attorneys, and law enforcement officers, who volunteer their time.

*IT Evaluation Team continued from page 7*

strations featured lively rounds of questions by Evaluation Team members, as well as by other future *MassCourts* users from the Trial Court who also attended the presentations.

The Evaluation Team next reviewed reports that each prospective vendor wrote in response to questions raised during the demonstrations, and graded the various technical aspects of each vendor's proposed system. At the same time, a smaller group of evaluators reviewed the financial aspects of the vendors' cost proposals. Based on those evaluations, two of the vendors were selected to participate in final cost and technical presentations in mid-September.

"The Team members have performed a tremendous service for the entire Trial Court and to the public



**A presenter from a company competing for the *MassCourts* contract addresses the IT Project Evaluation Team, made up of personnel from throughout the Trial Court, as well as the Supreme Judicial Court and the Executive Branch.**

that the courts serve," Ms. Laniewski said. "When *MassCourts* is operational, everyone will realize the value and benefit from the close attention and involvement of this Team. After more than eighteen

years of evaluations and procurement efforts, I can honestly say that this group, more than any other that I have worked with, has done everything possible to ensure success." ■

## CALENDAR

### OCTOBER

- 10 Flaschner Judicial Institute: "Nature of Judicial Process," presented by SJC Chief Justice Herbert P. Wilkins (Ret.) and Professor Andrew L. Kaufman, from 5:00 p.m. to 7:30 p.m., in Boston (Program also will be held on Nov. 7.)
- 17 Groundbreaking Ceremony for the Plymouth Trial Court, at 1:00 p.m., at the site of the Old Plymouth County Jail on Obery Street in Plymouth.
- 23-24 "Summit on Children and Courts: Improving Court Responses to Child Victims of Intra-Familial Violence and Sexual Abuse," co-sponsored by the Flaschner Judicial Institute and the Children's Law and Policy Initiative of Massachusetts Citizens for Children, from 9 a.m. to 4 p.m. both days, in Waltham.

### NOVEMBER

- 1 Judicial Institute: "Search Warrants/General Legal Update," for Clerks and Assistant Clerks of the Boston Municipal, District, and Juvenile courts, from 8:30 a.m. to 4:00 p.m., in Randolph. (Program also will be held in Shrewsbury on Nov. 7.)
- 7 Supreme Judicial Court Judiciary/Media Committee meeting, at 4:00 p.m., at the Supreme Judicial Court.
- 14-15 Flaschner Judicial Institute: "Hon. Haskell C. Freedman Retreat for Probate and Family Court Judges," from 9:00 a.m. to 4:00 p.m. both days, in Dedham.
- 21 Judicial Institute: "Occupational Spanish for Probation Officers," from 8:15 a.m. to 1:00 p.m., in Boston. (Program also will be held Dec. 3 and Dec. 17.)

For more information on Judicial Institute programs, call (617) 788-6775.

For more information on Flaschner Judicial Institute programs, call (617) 542-8838.

## The Court Compass

The Court Compass is a quarterly publication written and produced by the Public Information Office of the Massachusetts Supreme Judicial Court. Please send questions, comments, ideas, or letters to Joan Kenney, Public Information Officer, or to Bruce Brock, Publications Specialist.

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